

RWW/ek/MSR10106/LEGAL/pretrial/Affirmation

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BONO PARADY, as Special Administrator of the Estate
of SABINA PARADI and BODO PARADY and MARY
MOORE, individually,

Plaintiffs,

-against-

MICHAEL R. PHILLIPS,

Defendant.

07 CIV 3640 (VM) (JCF)
ECF CASE

Magistrate Judge James C. Francis

**AFFIRMATION IN PARTIAL
SUPPORT AND PARTIAL OPPOSITION
TO PLAINTIFF'S ORDER TO SHOW
CAUSE**

I, Richard Wedinger, Esq. an attorney duly admitted to practice law in the Federal Court – Southern District of New York and in the Courts of the State of New York am aware of the penalties of perjury duly affirms the following:

1. I am a member of the law firm of BARRY, McTIERNAN & WEDINGER, attorneys for defendant, MICHAEL R. PHILLIPS, in his individual capacity, and as such I am fully familiar with the facts and circumstances of this case.
2. I submit this affirmation in partial support and partial opposition to the relief sought in plaintiff's Order to Show Cause.
3. It is hereby submitted, through our Memorandum of Law, that the medical providers and Blue Cross/Blue Shield do not have a right to recover from both the plaintiff and defendant.
4. Said medical providers are not entitled to recover money from a settlement where the settlement is solely for pain and suffering and there has been no allocation for medical payments.

5. Additionally, that portion of plaintiff's Order to Show Cause which seeks to amend the pre-trial Order to include the medical claims should be denied. There has been no evidence submitted to support the medical claims as discussed in our Memorandum of Law.

WHEREFORE, it is respectfully requested that this Honorable Court issue an Order partially granting plaintiff's Order to Show Cause effectively barring said medical providers from obtaining a recovery of the settlement and denying that portion of plaintiff's order to Show Cause which seeks to amend the pre-trial Order to include the medical claims, and for such other, further and different relief as the Court may deem just and proper.

Dated: Edison, New Jersey
September 16, 2008

/s/ Richard Wedinger, Esq.

RICHARD WEDINGER, ESQ.